

<b>To:</b> <b>Mail Stop 8</b> <b>Director of Patents and Trademarks</b> <b>PO BOX 1450</b> <b>Alexandria VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116, you are hereby advised that a court action  
 has been filed in the U.S. District Court for the District of Utah on the following

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Patents

☒

Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
2:07cv00180 PGC	March 27, 2007	<b>Central District of Utah</b> <b>350 South Main Street, Room 150, Salt Lake City, UT 84101</b>
PLAINTIFF		DEFENDANT
<b>Klein-Becker usa LLC</b> <b>Klein-Becker IP Holdings LLC</b>		<b>Netnutri.com LLC</b> <b>Nutricentro International Inc</b> <b>Frank Huerta</b> <b>Eliezer Y. Kliger</b>
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 See attached complaint	September 2, 2003 2,760,414 November 21, 2006 3,175,013	Klein-Becker usa LLC; Klein-Becker IP Holdings LLC
2		
3		
4		
5		

SOLICITOR

SEP 26 2007

U.S. PATENT &amp; TRADEMARK OFFICE

In the above-entitled case, the following patents(s) have been included:

DATE INCLUDED	INCLUDED BY
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK
1	
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In the above-entitled case, a final decision had been rendered or judgment issued:

DECISION / JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE
D. Mark Jones, Clerk of Court	Cheryl L. Espinoza, Deputy Clerk	March 27, 2007

## DISTRIBUTION :

1) Upon initiation of action  
 mail copy to Commissioner &  
 lodge a copy in the file

2) Upon filing of document adding copyright(s),  
 mail copy to Commissioner &  
 lodge a copy in the file

3) Upon termination of action,  
 mail copy to Registrar of Copyrights &  
 lodge a copy in the file.

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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

KLEIN-BECKER usa, LLC, a Utah limited liability company, and KLEIN-BECKER IP HOLDINGS, LLC, a Nevada limited liability company,

Plaintiffs,

vs.

NETNUTRI.COM, LLC, a New Jersey limited liability company; NUTRICENTRO INTERNATIONAL, INC., a New Jersey corporation; FRANK HUERTA, a New Jersey citizen; ELIEZER Y. KLIGER, a New Jersey citizen; JOHN DOES I-X; and presently unknown entities, ENTITY XI-XX,

Defendants.

COMPLAINT

Civil Action No. 2:07CV180 PGC

Judge: Caswell

**[FILED UNDER SEAL]<sup>1</sup>**

**Jury Trial Demanded**

Plaintiffs Klein-Becker usa, LLC and Klein-Becker IP Holdings, LLC bring this lawsuit against Defendants NetNutri.com, LLC, Nutricentro International, Inc., Frank Huerta, Eliezer Y. Kliger, John Doe Defendants I-X, and Entity Defendants XI-XX, for trademark infringement and

<sup>1</sup> Pursuant to DUCivR 5-2, a case may be sealed at the time it is filed upon *ex parte* motion of the Plaintiff. This Complaint is being filed concurrently with the motion to seal the case.

unfair competition, copyright infringement, false advertising, violations of the Utah Unfair Practices Act, and intentional interference with existing and prospective business relations.

### OVERVIEW

Plaintiffs produce proprietary, topical, top quality cosmetic products, including products that improve the appearance of stretch marks and wrinkles, marketed and sold under the federally registered trademarks STRIVECTIN™ and STRIVECTIN-SD®. These products are sold in copyrighted packaging that incorporates Plaintiffs' unique and distinctive trade dress. As alleged more fully below, Defendants are engaged in the advertising, packaging, distribution, and sale of counterfeit STRIVECTIN-SD® cosmetics that reproduce Plaintiffs' copyrighted packaging and simulates Plaintiffs' distinctive trade dress. By their very nature, the counterfeit STRIVECTIN-SD® cosmetics advertised, distributed, and sold by Defendants are not subject to Plaintiffs' rigorous quality control program.

REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF: Plaintiffs are suffering irreparable harm as a direct result of Defendants' advertising, distribution, and sale of counterfeit STRIVECTIN-SD® cosmetics. If not enjoined, Defendants will continue to unlawfully advertise and sell counterfeit STRIVECTIN-SD® topical cosmetics thereby causing Plaintiffs continued irreparable injury for which there is no adequate remedy at law. Such injury includes, but is not limited to, the loss of goodwill and impairment of Plaintiffs' business relationship with authorized product manufacturers and authorized resellers. The law both encourages and requires Plaintiffs to vigilantly protect the trademark interests on pain of losing exclusive rights. Accordingly, *time is of the essence.*

PARTIES

1. Plaintiff Klein-Becker usa, LLC ("Klein-Becker usa") is a limited liability company doing business as Klein-Becker usa, organized and existing under the laws of the State of Utah, with its principal place of business located in Salt Lake City, Utah.

2. Plaintiff Klein-Becker IP Holdings, LLC ("Klein-Becker IP") is a limited liability company organized and existing under the laws of the State of Nevada, with its principal place of business located in Carson City, Nevada.

3. On information and belief, Defendant NetNutri.com, LLC was a limited liability company organized and existing under the laws of the State of New Jersey, having its principal place of business at 5307 Bergenline Avenue, West New York, New Jersey 07093. On information and belief, its legal status to conduct business was revoked by the State of New Jersey as of March 26, 2007.

4. On information and belief, Defendant Nutricentro International, Inc. is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business at 5307 Bergenline Avenue, West New York, New Jersey 07093. Prior to September 2004, Defendant Nutricentro International, Inc. was an authorized reseller of STRIVECTIN<sup>™</sup> and STRIVECTIN-SD<sup>®</sup> cosmetic products.

5. On information and belief, Defendant Frank Huerta is a resident and citizen of the State of New Jersey having his principal place of business at 5307 Bergenline Avenue, West New York, New Jersey 07093; is an officer and/or director of Defendant Nutricentro International, Inc.; and has materially participated in and supervised the acts of Defendants NetNutri.com, LLC and Nutricentro International, Inc. complained of in this Complaint.

6. On information and belief, Defendant Eliezer Y. Kliger, also known as Elijah Kliger, also known as Eli Kliger, is a resident and citizen of the State of New York having a principal place of business at 5307 Bergenline Avenue, West New York, New Jersey 07093 and/or 560 55<sup>th</sup> Street, West New York, New Jersey 07093; and has materially participated in and supervised the acts of Defendants NetNutri.com, LLC and Nutricentro International, Inc. complained of in this Complaint.

7. Defendants John Does I-X are individuals, Entities XI-XX are entities, whose respective identities currently are unknown, but on information and belief are in privity and/or are acting in concert with Defendants NetNutri.com, LLC, Nutricentro International, Inc., Frank Huerta, and/or Eliezer Y. Kliger in connection with the manufacture, distribution, and/or sale of counterfeit STRIVECTIN-SD<sup>®</sup> cosmetics.

#### JURISDICTION AND VENUE

8. This is an action for trademark infringement and unfair competition under the Federal Trademark Act, 15 U.S.C. § 1051 *et seq.*, and at common law; copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*; violations of Utah Unfair Practices Act, Utah Code Ann. § 13-5-1 *et seq.*; and intentional interference with existing and prospective business relations, all arising out of Defendants' distribution and sale of counterfeit STRIVECTIN-SD<sup>®</sup> cosmetic products in the State of Utah and in interstate commerce.

9. The Court has jurisdiction over the subject matter and parties under § 39 of the Federal Trademark Act, 15 U.S.C. § 1121, and the Judicial Code, 28 U.S.C. §§ 1331, 1332, 1338 and 1400(a). The parties are diverse. The value of the matter in controversy exceeds the sum or value of \$75,000.

10. Plaintiffs' state law claims are integrally related to the federal claims and arise from a common nucleus of operative facts, such that the resolution of all claims in this Court furthers judicial economy. Accordingly, the Court also has supplemental jurisdiction with respect to Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

11. On information and belief, Defendants: (a) have transacted business within the State of Utah by advertising and selling merchandise in Utah; (b) have caused tortious injury within the State of Utah by *inter alia* engaging in acts of trademark infringement; and (c) are doing business in Utah by consistently and systematically entering into contracts with residents of this jurisdiction that involve the knowing and repeated transmission of computer files over the Internet regarding sales of counterfeit STRIVECTIN-SD<sup>®</sup> cosmetic products. Defendants have purposefully and deliberately developed and operated an Internet Web site with a high level of interactivity, which encourages and enables customers accessing the Web site to order phony STRIVECTIN-SD<sup>®</sup> cosmetic products resulting in economic benefit to Defendants, and thus have purposefully availed themselves of the privilege of doing business in this jurisdiction. Defendants accordingly are subject to the personal jurisdiction of this Court under Utah Code Ann. § 78-27-24.

12. Venue is proper in this Court under 28 U.S.C. § 1391 (b) and (c).

#### **FACTUAL ALLEGATIONS**

13. In 2002, prior to the acts complained of in this Complaint, Plaintiffs developed an extensive line of proprietary topical cosmetic products that continuously have been distributed and sold in interstate commerce and in the State of Utah under federally granted trademarks

STRIVECTIN™ and STRIVECTIN-SD® and in copyrighted packaging that incorporates Plaintiffs' unique and distinctive trade dress.

14. STRIVECTIN™ is a coined, arbitrary word that was chosen as a trademark due to its uniqueness and high degree of inherent distinctiveness.

15. As a result of the extensive and substantial advertising and sales of topical cosmetic products under the trademarks STRIVECTIN™ and STRIVECTIN-SD® and Plaintiffs' maintenance of premium quality standards relating to products associated with those marks, the marks STRIVECTIN™ and STRIVECTIN-SD® have become exceedingly well and favorably known to the general consuming public throughout the United States and in the State of Utah as distinctive indications of origin of Plaintiffs' cosmetic products.

16. Klein-Becker IP is the owner of the trademarks STRIVECTIN™ and STRIVECTIN-SD®. Plaintiffs and their predecessors continuously have used said marks on and in connection with cosmetic products and in the advertising and sale of such products in interstate commerce since as early as August of 2002.

17. Plaintiffs' predecessor registered STRIVECTIN-SD® as a trademark for cosmetics, namely for ameliorating the appearance of existing stretch marks, in the United States Patent and Trademark Office under Registration No. 2,760,414 which issued September 2, 2003. Klein-Becker IP is the record owner of Registration No. 2,760,414 by virtue of an assignment recorded in the United States Patent and Trademark Office on September 2, 2003.

18. Klein-Becker IP duly registered STRIVECTIN™ as a trademark for cosmetics, in the United States Patent and Trademark Office under Registration No. 3,175,013, which issued November 21, 2006.

19. Registration Nos. 2,760,414 and 3,175,013 are *prima facie* evidence of the validity and ownership of, and are constructive notice of ownership of, the marks STRIVECTIN-SD® and STRIVECTIN™, respectively, all as provided by §§ 7(b) and 22 of the Federal Trademark Act, 15 U.S.C. §§ 1057(b) and 1072. True copies of Registration Nos. 2,760,414 and 3,175,013 are attached hereto as Exhibits A and B.

20. The U.S. Copyrights for the packaging for STRIVECTIN-SD® eye cream and stretch mark cream were registered with the U.S. Copyright Office by Klein-Becker IP on February 4 and 17, 2005 under Registration Nos. VA 1-324-409 and VA 1-325-772, respectively. True copies of Copyright Registration Nos. VA 1-324-409 and VA 1-325-772 are attached hereto as Exhibits C and D.

21. Klein-Becker IP has granted an exclusive license to Klein-Becker usa to use the trademarks STRIVECTIN™ and STRIVECTIN-SD® in connection with cosmetic products and the copyrighted material which is the subject of Copyright Registration Nos. VA 1-324-409 and VA 1-325-772.

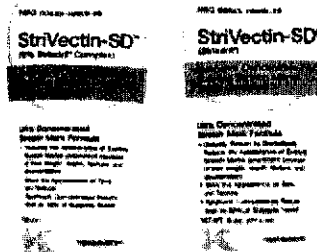
22. By virtue of said exclusive license, Plaintiffs are related companies within the meaning of § 5 of the Federal Trademark Act, 15 U.S.C. § 1055. Consequently, all use of the trademarks STRIVECTIN™ and STRIVECTIN-SD® in connection with cosmetic products and said copyrighted materials by Klein-Becker usa inures to the benefit of Klein-Becker IP Holdings.

23. Plaintiffs utilize a number of authorized resellers to distribute STRIVECTIN™ and STRIVECTIN-SD® cosmetic products. These authorized resellers, who are selected based on their reputation and their proven ability to service customers, are trained in and agree to meet Plaintiffs' quality control standards for storing and selling STRIVECTIN™ and STRIVECTIN-



SD<sup>®</sup> cosmetic products. Defendants are not authorized resellers or authorized manufacturers of STRIVECTIN<sup>™</sup> and STRIVECTIN-SD<sup>®</sup> cosmetic products.

24. Notwithstanding Plaintiffs' well-known and prior established rights in the trademarks STRIVECTIN<sup>™</sup> and STRIVECTIN-SD<sup>®</sup>, Defendants are engaged in advertising, offering for sale, distribution, and sale of cosmetic products bearing a counterfeit reproduction of the trademark STRIVECTIN-SD<sup>®</sup>. The following illustrations of Plaintiffs' authentic STRIVECTIN-SD<sup>®</sup> cosmetic product *on the left* and Defendants' counterfeit STRIVECTIN-SD<sup>®</sup> cosmetic product *on the right* demonstrate that Defendants' products virtually are indistinguishable from Plaintiffs' products:



25. On information and belief, Defendants' counterfeit STRIVECTIN-SD<sup>®</sup> cosmetic products are offered for sale and are sold to residents of the State of Utah. A true copy of an online advertisement for Defendants' counterfeit STRIVECTIN-SD<sup>®</sup> cosmetic products which is readily accessible in Utah is attached hereto as Exhibit E.

26. Plaintiffs provide a money-back guarantee for every STRIVECTIN™ and STRIVECTIN-SD® cosmetic product. Customers who purchase Defendants' counterfeit STRIVECTIN-SD® products and who are dissatisfied are likely to return such phony products to Plaintiffs or to an authorized reseller, for a full refund of their purchase price.

27. Scientific testing of the counterfeit STRIVECTIN-SD® cosmetic products sold by Defendants has disclosed that those products do not contain any detectable amount of the pentapeptide molecule PAL-KTTKS. The pentapeptide molecule PAL-KTTKS is one of the key functional ingredients in authentic STRIVECTIN-SD® cosmetics. It contributes to the anti-wrinkle effect of the genuine STRIVECTIN-SD® product.

28. The absence of the pentapeptide molecule PAL-KTTKS in Defendants' counterfeit STRIVECTIN-SD® cosmetics renders the counterfeit product unsuitable to deliver the intended effect of the authentic product which consumers wish to obtain.

29. Notwithstanding the absence of any detectable amount of the pentapeptide molecule PAL-KTTKS in Defendants' counterfeit STRIVECTIN-SD® products, the labeling for such products, which is copied from Plaintiffs' authentic packaging, indicates that it does contain this key ingredient. Consequently, Defendants are falsely representing that their counterfeit products will produce a benefit that cannot be substantiated because the counterfeit products do not contain PAL-KTTKS.

### **COUNT I TRADEMARK INFRINGEMENT**

30. As a cause of action and ground for relief, Plaintiffs allege that Defendants jointly and severally are engaged in acts of trademark infringement under § 32(1) of the Federal

Trademark Act, 15 U.S.C. § 1114(1), and at common law and incorporate by reference ¶¶ 1 through 29 of the Complaint as a part of this count.

31. On information and belief, Defendants have engaged intentionally in offering for sale, distribution, and sale of counterfeit STRIVECTIN-SD<sup>®</sup> cosmetic products in interstate commerce and in the State of Utah with knowledge that such goods are sold under counterfeit reproductions of Plaintiffs' trademark STRIVECTIN-SD<sup>®</sup>.

32. On information and belief, Defendants intentionally have used and are using counterfeit reproductions of the trademark STRIVECTIN-SD<sup>®</sup> for the purpose of exploiting and trading upon the substantial goodwill and reputation of Plaintiffs, symbolized by the trademarks STRIVECTIN<sup>™</sup> and STRIVECTIN-SD<sup>®</sup> and to enable Defendants to misrepresent their products as emanating from or otherwise sponsored or approved by Plaintiffs.

33. Defendants' use of counterfeit reproductions of the trademark STRIVECTIN-SD<sup>®</sup> in the advertising, offering for sale, distribution, and sale of cosmetic products is likely to cause the consumers and prospective consumers to believe, contrary to fact, that the cosmetic products sold under said counterfeit reproductions are manufactured by or emanate from, or otherwise are sponsored or approved by, Plaintiffs. Defendants' use of these counterfeit reproductions of the trademark STRIVECTIN-SD<sup>®</sup> accordingly infringes Plaintiffs' exclusive rights in the trademarks STRIVECTIN-SD<sup>®</sup> and STRIVECTIN<sup>™</sup> under § 32(1) of the Federal Trademark Act, 15 U.S.C. § 1114(1), and at common law.

34. On information and belief, Defendants had actual knowledge of Plaintiffs' prior use of and exclusive rights in the trademarks STRIVECTIN-SD<sup>®</sup> and STRIVECTIN<sup>™</sup> when they commenced the advertising, offering for sale, distributing, and selling of cosmetic products

bearing counterfeit reproductions of the trademark STRIVECTIN-SD<sup>®</sup>, and thus willfully and deliberately have infringed Plaintiffs' exclusive trademark rights.

35. Plaintiffs have sustained monetary damages in excess of \$75,000, in an amount to be determined at trial, as the proximate result of Defendants' acts of trademark infringement.

36. Unless enjoined, Defendants will continue to infringe the trademarks STRIVECTIN-SD<sup>®</sup> and STRIVECTIN<sup>™</sup> by advertising, offering for sale, distributing and selling of cosmetic products under counterfeit reproductions of the trademark STRIVECTIN-SD<sup>®</sup>, thereby deceiving the public and causing Plaintiffs immediate and irreparable injury, including the loss or impairment of goodwill and lost customers, for which they have no adequate remedy at law.

## COUNT II UNFAIR COMPETITION

37. As a cause of action and ground for relief, Plaintiffs allege that Defendants jointly and severally are engaged in acts of unfair competition under § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a), and at common law and incorporate by reference ¶¶ 1 through 29 of the Complaint as a part of this count.

38. Defendants' advertising, offering for sale, and sale of cosmetic products under counterfeit reproductions of the trademark STRIVECTIN-SD<sup>®</sup> in the manner above alleged constitute the use of a false designation of origin within the meaning of § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a). Defendants misconduct is likely to confuse or deceive the public as to the source, sponsorship, and approval of said products, thereby causing Plaintiffs immediate and irreparable damage for which they have no adequate remedy at law.

39. The nature and probable tendency and effect of Defendants' use of counterfeit reproductions of the trademark STRIVECTIN-SD® is to enable Defendants to confuse or deceive the public and others by passing off their cosmetic products as manufactured by or emanating from, or otherwise sponsored or approved by, Plaintiffs. Such conduct constitutes unfair competition with Plaintiffs at common law and is causing and, unless enjoined, will continue to cause Plaintiffs immediate and irreparable injury for which they have no adequate remedy at law.

40. Plaintiffs have sustained monetary damages in excess of \$75,000, in an amount to be determined at trial, as the proximate result of Defendants' acts of unfair competition.

### COUNT III COPYRIGHT INFRINGEMENT

41. As a cause of action and ground for relief, Plaintiffs allege that Defendants jointly and severally are engaged in acts of copyright infringement under § 501 of the Copyright Act, 17 U.S.C. § 501, and incorporate by reference ¶¶ 1 through 29 of the Complaint as a part of this count.

42. The phony packaging for Defendants' counterfeit STRIVECTIN-SD® products unlawfully copies protected elements of Plaintiffs' copyrighted materials in violation of the exclusive rights created by § 106 of the Copyright Act, 17 U.S.C. § 106, and thus constitutes *willful* copyright infringement under § 501 of the Copyright Act, 17 U.S.C. § 501.

43. Plaintiffs have sustained monetary damages in excess of \$75,000, in an amount to be determined at trial, as the proximate result of Defendants' acts of copyright infringement.

44. Unless enjoined, Defendants will continue to infringe Plaintiffs' copyrighted materials, thereby causing Plaintiffs immediate and irreparable injury for which they have no adequate remedy at law.

**COUNT IV**  
**VIOLATIONS OF THE UTAH UNFAIR PRACTICES ACT**

45. As a cause of action and ground for relief, Plaintiffs allege that Defendants jointly and severally are engaged in violations of the Utah Unfair Practices Act, Utah Code Ann. § 13-5-1 *et seq.*, and incorporate by reference ¶¶ 1 through 29 of the Complaint as a part of this count.

46. By offering for sale and selling counterfeit STRIVECTIN-SD<sup>®</sup> cosmetic products in the State of Utah, Defendants knowingly and intentionally have represented that such products are sponsored, approved and/or offer features and benefits, and that such products do not possess, namely, that they are genuine, authentic STRIVECTIN-SD<sup>®</sup> cosmetic products emanating from Plaintiff. Such acts by Defendants constitute false and deceptive acts in violation of the Utah Unfair Practices Act, Utah Code Ann. § 13-5-1 *et seq.*

47. Plaintiffs have sustained monetary damages in excess of \$75,000, in an amount to be determined at trial, as the proximate result of Defendants' violations of the Utah Unfair Practices Act, Utah Code Ann. § 13-5-1 *et seq.*

48. Unless enjoined, Defendants will continue to violate the Utah Unfair Practices Act, Utah Code Ann. § 13-5-1 *et seq.*, thereby causing Plaintiffs immediate and irreparable injury for which they have no adequate remedy at law.

**COUNT V**  
**INTENTIONAL INTERFERENCE WITH EXISTING AND PROSPECTIVE BUSINESS RELATIONSHIPS**

49. As a cause of action and ground for relief, Plaintiffs allege that Defendants jointly and severally have intentionally interfered with Plaintiffs' existing and prospective relationships, and incorporate by reference ¶¶ 1 through 48 of the Complaint as a part of this count.

50. Plaintiffs currently have contracts and/or business relations with authorized product manufacturers and authorized resellers relating to the manufacture, distribution, marketing and sale of authentic STRIVECTIN™ and STRIVECTIN-SD® cosmetic products. Such contracts and/or business relations are beneficial and of high value to Plaintiffs.

51. On information and belief, Defendants are aware of Plaintiffs' contracts and/or business relations with authorized product manufacturers and authorized resellers relating to the manufacture, distribution, marketing, and/or sale of authentic STRIVECTIN™ and STRIVECTIN-SD® cosmetic products.

52. Defendants' unlawful advertising, offering for sale, and sale of counterfeit STRIVECTIN-SD® cosmetic products intentionally interfere with Plaintiffs' existing and potential business relations including, but not limited to, the value of Plaintiffs' contracts and/or business relations with authorized product manufacturers and authorized resellers of authentic STRIVECTIN™ and STRIVECTIN-SD® cosmetic products.

53. Plaintiffs have sustained monetary damages in excess of \$75,000, in an amount to be determined at trial, as the proximate result of Defendants' intentional interference with existing and prospective business relations and are entitled to recover actual damages, punitive damages, and other relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Klein-Becker usa, LLC and Klein-Becker IP Holdings, LLC pray for relief and judgment as follows:

1. Judgment that Defendants jointly and severally have infringed Plaintiffs' exclusive rights in the trademarks STRIVECTIN™ and STRIVECTIN-SD® under

§ 32(1) of the Federal Trademark Act, 15 U.S.C. § 1114(1), and at common law by the advertising, offering for sale, distribution, and sale of cosmetics under counterfeit reproductions of Plaintiff's trademarks STRIVECTIN-SD® and/or STRIVECTIN™; Defendants acted with full knowledge that said goods are sold under a trademark, which is a counterfeit reproduction; Defendants jointly and severally have competed unfairly with Plaintiffs under § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a), and at common law; Defendants jointly and severally have infringed Plaintiffs' protected copyrighted material under § 501 of the Copyright act, 17 U.S.C. § 501; Defendants jointly and severally have engaged in violations of the Utah Unfair Practices Act, Utah Code Ann. § 13-5-1 *et seq.*; Defendants jointly and severally have intentionally interfered with Plaintiffs' existing and prospective business relations; and Defendants have otherwise injured Plaintiffs' business reputation in the manner complained of in this Complaint.

2. Defendants and each of their respective agents, employees, servants, attorneys, successors and assigns, and all others in privity or acting in concert, be preliminarily and permanently enjoined from:

- a. Using any counterfeit reproduction of the trademarks STRIVECTIN-SD® and/or STRIVECTIN™ or any other reproduction, counterfeit, copy, or colorable imitation of said marks or otherwise infringing the trademarks STRIVECTIN-SD® and/or STRIVECTIN™;
- b. Competing unfairly with Plaintiffs or otherwise injuring Plaintiffs' business reputation in the manner complained of in this Complaint;
- c. Infringing Plaintiffs' protected copyrighted material;



- d. Violating the Utah Unfair Practices Act, Utah Code Ann. § 13-5-1 *et seq.*;
- and
- e. Intentionally interfering with Plaintiffs' existing and prospective business relations.

3. Defendants be temporarily restrained – pending a hearing on Plaintiffs' entitlement to a preliminary injunction – from manufacturing, importing, offering for sale, distributing, selling and/or otherwise disposing of any counterfeit STRIVECTIN-SD® and/or STRIVECTIN™ cosmetic products in their possession, custody, or control.

4. Pursuant to § 36 of the Federal Trademark Act, 15 U.S.C. § 1118, Defendants are directed to deliver up for destruction by Plaintiffs, all cosmetic products and all advertisements, price lists, product brochures, labels, signs, prints, decals, packages, boxes, cartons, wrappers, receptacles, tubes, and all other materials in the possession, custody or under the control of Defendants that bear any counterfeit or otherwise infringing reproductions of the trademarks STRIVECTIN-SD® and/or STRIVECTIN™, or any other reproductions, counterfeit, copy or colorable imitation of said trademarks and all plates, molds, matrices, and any other means of making or duplicating the same.

5. Defendant be required to pay to Plaintiffs the damages, both compensatory and statutory, which Plaintiffs have sustained as a result of Defendants' acts of trademark infringement, unfair competition, copyright infringement, violations of the Utah Unfair Practices Act, Utah Code Ann. § 13-5-1 *et seq.*, and/or intentional interference with Plaintiffs' existing or prospective business relationships.

6. All damages Plaintiffs have sustained as a result of Defendants' acts of trademark infringement and/or unfair competition be trebled pursuant to § 35(b) of the Federal Trademark Act, 15 U.S.C. § 1117(b).

7. Defendants be required to pay to Plaintiffs as punitive damages the sum of Five Hundred Thousand Dollars (\$500,000.00) or such other amount as the Court may deem just.

8. Pursuant to § 35(a) of the Federal Trademark Act, 15 U.S.C. § 1117(a), as amended, Defendants be required to account for and pay to Plaintiffs the profits Defendants have realized which are attributable to their acts of trademark infringement and/or unfair competition complained of herein, and that said profits be trebled pursuant to § 35(b) of the Federal Trademark Act, 15 U.S.C. § 1117(b).

9. Plaintiffs be awarded such pre-judgment and post-judgment interest, as permitted by law.

10. Defendant be required to pay to Plaintiffs both the costs of this action and, in view of the exceptional nature of this case, Plaintiffs' reasonable attorneys' fees in accordance with § 35(a) of the Federal Trademark Act, 15 U.S.C. § 1117(a).

11. A constructive trust be imposed on any and all income received by Defendants and those acting in concert with Defendants, including but not limited to the John Doe Defendants I-X, and the Entity Defendants XI-XX, from the sale of counterfeit STRIVECTIN-SD<sup>®</sup> and/or STRIVECTIN<sup>™</sup> cosmetic products.

12. Plaintiffs be granted such other, different, and further relief as the Court deems just, equitable, and proper.

**JURY DEMAND**

Pursuant to Rule 38(b) Fed. R. Civ. P., Plaintiffs hereby demand a trial by jury.

DATED this 26<sup>th</sup> day of March, 2007.

Respectfully Submitted,

**HOWREY LLP**

By  \_\_\_\_\_

Attorney for Plaintiffs

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